

### REMARKS

Applicant has amended claims 1, 4-6, 14, 20-25, and 28-29. Claims 8-9 have been canceled. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§102(b), 103, and 112 rejections as set forth in the Office Action dated May 18, 2005. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to claims 1, 6, 22, 23, and 28 for the inclusion of a blank line where the ATCC Accession number should be. Applicant has amended claims 1, 6, 22, 23, and 28 to include the ATCC Accession number. Withdrawal of this objection is respectfully requested.

The Examiner has objected to claim 28 for grammatical incorrectness. Applicant has amended claim 28 as suggested by the Examiner. Withdrawal of this objection is respectfully requested.

The Examiner has rejected claims 1, 6, 20-24, 28, and 29 and claims 2-5, 7-21, and 25-27 dependent thereon, under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. Specifically, the Examiner has rejected claims 1, 6, 22-24, 28-29 and claims 2-5, 7-21, and 25-27 dependent thereon, as indefinite in that the recitation of "a soybean line designated 2386009" does not clearly identify the claimed soybean cultivar and seed and does not set forth the metes and bounds of the claimed invention. Applicant has amended claims 1, 6, 22, 23, and 28 to include the ATCC Accession number. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 20-21 and 28-29 under 35 U.S.C. §112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. Applicant has amended claims 20-21 and 28-29. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8-9, 23-24, and 28-29 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has

amended claims 23-24 and 28-29 and has canceled claims 8-9. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-29 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has amended claims 1, 6, 22, 23, and 28 to include the ATCC Accession number. Additionally, the undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit was performed; and
- e) the deposit will be replaced if it should ever become inviable or when, requested by ATCC.

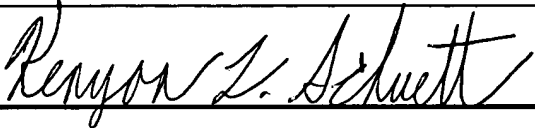
Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8-9 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103 as obvious over soybean cultivar 9492 (U.S. Patent 5,792,907; issued 8/11/1998). Applicant has canceled claims 8-9. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102(b), 103, and 112. Reconsideration of this application and an early notice of allowance is respectfully requested.

Application No. 10/779,579  
Amendment dated July 20, 2005  
Reply to Office Action dated May 18, 2005

Page 10

<b>SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED</b>					
NAME AND REG. NUMBER	Kenyon L. Schuett, Reg. No. 44,324				
SIGNATURE				DATE	July 20, 2005
Address	Jondle & Associates P.C. Suite 200, 9085 East Mineral Circle				
City	Centennial	State	CO	Zip Code	80112
Country	U.S.A.	Telephone	303-799-6444	Fax	303-799-6898